

AMENDED IN SENATE APRIL 5, 2005

SENATE BILL

No. 137

Introduced by Senators Ducheny, Dunn, and Figueroa
(Coauthors: Senators Alquist, Denham, Escutia, and Kuehl)
(Coauthors: Assembly Members Jones, Leno, Lieber, and Torrico)

February 2, 2005

An act to amend Sections 1365.1 and 1367.1 of, to add Sections 1367.4 and 1367.5 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 137, as amended, Ducheny. Common interest developments: assessments.

~~Existing law~~

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. ~~Existing law~~ *The act* provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. ~~Existing law~~ *The act* permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

~~Existing law~~

The act authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full

under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2006. The bill would provide that when an association of a common interest development seeks to collect delinquent assessments of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$2,500. The bill would repeal provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.

The bill would permit an association of a common interest development seeking to collect delinquent regular or special assessments of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect dispute resolution or alternative dispute resolution procedures, under specified circumstances. The association would be prohibited from recording a lien or initiating a foreclosure action without participating in those procedures if so requested by the owner. If it is determined through dispute resolution or alternative dispute resolution that an association has filed a lien for a delinquent assessment in error, the association would be required to reverse specified charges and take other corrective actions.

The bill would further provide that, notwithstanding any law to the contrary, a foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days.

The bill would establish a minimum bid of 65% of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified. The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would *require the association to send any and all correspondence, billings, and legal notices to both a primary and secondary address, if the owner provides written notice of the secondary address to the association.* The bill also authorize an association created to manage a common interest development to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the association.

The bill would make other related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.1 of the Civil Code is amended to
2 read:

3 1365.1. (a) The association shall distribute the written notice
4 described in subdivision (b) to each member of the association
5 during the 60-day period immediately preceding the beginning of
6 the association's fiscal year. The notice shall be printed in at least
7 12-point type. An association distributing the notice to an owner
8 of an interest that is described in Section 11212 of the Business
9 and Professions Code that is not otherwise exempt from this
10 section pursuant to subdivision (a) of Section 11211.7, may
11 delete from the notice described in subdivision (b) the portion
12 regarding meetings and payment plans.

13 (b) The notice required by this section shall read as follows:

14
15 "NOTICE ASSESSMENTS AND ~~FORECLOSURE~~"
16 FORECLOSURE
17

18 This notice outlines some of the rights and responsibilities of
19 owners of property in common interest developments and the
20 associations that manage them. Please refer to the sections of the

1 Civil Code indicated for further information. A portion of the
2 information in this notice applies only to liens recorded on or
3 after January 1, 2003. You may wish to consult a lawyer if you
4 dispute an assessment.

6 ASSESSMENTS AND FORECLOSURE

8 Assessments become delinquent 15 days after they are due,
9 unless the governing documents provide for a longer time. The
10 failure to pay association assessments may result in the loss of an
11 owner's property through foreclosure. Foreclosure may occur
12 either as a result of a court action, known as judicial foreclosure
13 or without court action, often referred to as nonjudicial
14 foreclosure. For liens perfected on and after January 1, 2006, an
15 association may not use judicial or nonjudicial foreclosure to
16 enforce that lien if the amount of the delinquent assessments or
17 dues, exclusive of any late charges, fees, attorney's fees, interest,
18 and costs of collection, is less than two thousand five hundred
19 dollars (\$2,500). For delinquent assessments or dues in excess of
20 two thousand five hundred dollars (\$2,500), an association may
21 use judicial or nonjudicial foreclosure subject to the conditions
22 set forth in Section 1367.4 of the Civil Code. When using judicial
23 or nonjudicial foreclosure, the association records a lien on the
24 owner's property. The owner's property may be sold to satisfy
25 the lien if the amounts secured by the lien are not paid. (Sections
26 1366 , 1367.1, and 1367.4 of the Civil Code)

27 In a judicial or nonjudicial foreclosure, the association may
28 recover assessments, reasonable costs of collection, reasonable
29 attorney's fees, late charges, and interest. The association may
30 not use nonjudicial foreclosure to collect fines or penalties,
31 except for costs to repair common areas damaged by a member
32 or a member's guests, if the governing documents provide for
33 this. (Sections 1366 and 1367.1 of the Civil Code)

34 The association must comply with the requirements of Section
35 1367.1 of the Civil Code when collecting delinquent
36 assessments. If the association fails to follow these requirements,
37 it may not record a lien on the owner's property until it has
38 satisfied those requirements. Any additional costs that result from
39 satisfying the requirements are the responsibility of the
40 association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

(c) A member of an association may provide written notice by facsimile transmission or United States mail to the association of a secondary address. If a secondary address is provided, the association shall send any and all correspondence, billings, and legal notices to both the primary and the secondary address.

SEC. 2. Section 1366.3 of the Civil Code is repealed.

SEC. 3. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

1 (2) An itemized statement of the charges owed by the owner,
2 including items on the statement which indicate the amount of
3 any delinquent assessments, the fees and reasonable costs of
4 collection, reasonable attorney's fees, any late charges, and
5 interest, if any.

6 (3) A statement that the owner shall not be liable to pay the
7 charges, interest, and costs of collection, if it is determined the
8 assessment was paid on time to the association.

9 (4) The right to request a meeting with the board as provided
10 by paragraph (3) of subdivision (c).

11 (5) The right to dispute the assessment debt by submitting a
12 written request for dispute resolution to the association pursuant
13 to Article 5 (commencing with Section 1363.810) of Chapter 4 of
14 ~~Title 6 of Part 4 of Division 2.~~

15 (6) The right to request alternative dispute resolution with a
16 neutral third party pursuant to Article 2 (commencing with
17 Section 1369.510) of Chapter 7 of Part 4 of Division 2 before the
18 association may initiate foreclosure against the owner's separate
19 interest.

20 (b) Any payments made by the owner of a separate interest
21 toward the debt set forth, as required in subdivision (a), shall first
22 be applied to the assessments owed, and, only after the
23 assessments owed are paid in full shall the payments be applied
24 to the fees and costs of collection, attorney's fees, late charges, or
25 interest. When an owner makes a payment, the owner may
26 request a receipt and the association shall provide it. The receipt
27 shall indicate the date of payment and the person who received it.
28 The association shall provide a mailing address for overnight
29 payment of assessments.

30 (c) (1) (A) Prior to recording a lien for delinquent
31 assessments, an association shall offer the owner and, if so
32 requested by the owner, participate in dispute resolution pursuant
33 to Article 5 (commencing with Section 1363.810) of Chapter 4 of
34 ~~Title 6 of Part 4 of Division 2.~~

35 (B) Prior to initiating a foreclosure for delinquent assessments,
36 an association shall offer the owner and, if so requested by the
37 owner, shall participate in dispute resolution pursuant to Article
38 5 (commencing with Section 1363.810) of Chapter 4 of ~~Title 6 of~~
39 ~~Part 4 of Division 2~~ or alternative dispute resolution with a
40 neutral third party pursuant to Article 2 (commencing with

1 Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2.
2 The decision to pursue dispute resolution or a particular type of
3 alternative dispute resolution shall be the choice of the owner,
4 except that binding arbitration shall not be available if the
5 association intends to initiate a judicial foreclosure.

6 (2) For liens recorded on or after January 1, 2006, the decision
7 to record a lien for delinquent assessments shall be made only by
8 the board of directors of the association and may not be delegated
9 to an agent of the association. The board shall approve the
10 decision by a majority vote of the board members in an open
11 meeting. The board shall record the vote in the minutes of that
12 meeting.

13 (3) An owner, other than an owner of any interest that is
14 described in Section 11212 of the Business and Professions Code
15 that is not otherwise exempt from this section pursuant to
16 subdivision (a) of Section 11211.7, may submit a written request
17 to meet with the board to discuss a payment plan for the debt
18 noticed pursuant to subdivision (a). The association shall provide
19 the owners the standards for payment plans, if any exist. The
20 board shall meet with the owner in executive session within 45
21 days of the postmark of the request, if the request is mailed
22 within 15 days of the date of the postmark of the notice, unless
23 there is no regularly scheduled board meeting within that period,
24 in which case the board may designate a committee of one or
25 more members to meet with the owner.

26 (d) The amount of the assessment, plus any costs of collection,
27 late charges, and interest assessed in accordance with Section
28 1366, shall be a lien on the owner's interest in the common
29 interest development from and after the time the association
30 causes to be recorded with the county recorder of the county in
31 which the separate interest is located, a notice of delinquent
32 assessment, which shall state the amount of the assessment and
33 other sums imposed in accordance with Section 1366, a legal
34 description of the owner's interest in the common interest
35 development against which the assessment and other sums are
36 levied, the name of the record owner of the owner's interest in
37 the common interest development against which the lien is
38 imposed. In order for the lien to be enforced by nonjudicial
39 foreclosure as provided in subdivision (g), the notice of
40 delinquent assessment shall state the name and address of the

1 trustee authorized by the association to enforce the lien by sale.
2 The notice of delinquent assessment shall be signed by the
3 person designated in the declaration or by the association for that
4 purpose, or if no one is designated, by the president of the
5 association, and mailed in the manner set forth in Section 2924b,
6 to all record owners of the owner's interest in the common
7 interest development no later than 10 calendar days after
8 recordation. Within 21 days of the payment of the sums specified
9 in the notice of delinquent assessment, the association shall
10 record or cause to be recorded in the office of the county recorder
11 in which the notice of delinquent assessment is recorded a lien
12 release or notice of rescission and provide the owner of the
13 separate interest a copy of the lien release or notice that the
14 delinquent assessment has been satisfied. A monetary charge
15 imposed by the association as a means of reimbursing the
16 association for costs incurred by the association in the repair of
17 damage to common areas and facilities for which the member or
18 the member's guests or tenants were responsible may become a
19 lien against the member's separate interest enforceable by the
20 sale of the interest under Sections 2924, 2924b, and 2924c,
21 provided the authority to impose a lien is set forth in the
22 governing documents. It is the intent of the Legislature not to
23 contravene Section 2792.26 of Title 10 of the California Code of
24 Regulations, as that section appeared on January 1, 1996, for
25 associations of subdivisions that are being sold under authority of
26 a subdivision public report, pursuant to Part 2 (commencing with
27 Section 11000) of Division 4 of the Business and Professions
28 Code.

29 (e) Except as indicated in subdivision (d), a monetary penalty
30 imposed by the association as a disciplinary measure for failure
31 of a member to comply with the governing instruments, except
32 for the late payments, may not be characterized nor treated in the
33 governing instruments as an assessment that may become a lien
34 against the member's subdivision separate interest enforceable by
35 the sale of the interest under Sections 2924, 2924b, and 2924c.

36 (f) A lien created pursuant to subdivision (d) shall be prior to
37 all other liens recorded subsequent to the notice of assessment,
38 except that the declaration may provide for the subordination
39 thereof to any other liens and encumbrances.

1 (g) An association may not voluntarily assign or pledge the
2 association's right to collect payments or assessments, or to
3 enforce or foreclose a lien to a third party, except when the
4 assignment or pledge is made to a financial institution or lender
5 chartered or licensed under federal or state law, when acting
6 within the scope of that charter or license, as security for a loan
7 obtained by the association; however, the foregoing provision
8 may not restrict the right or ability of an association to assign any
9 unpaid obligations of a former member to a third party for
10 purposes of collection. Subject to the limitations of this
11 subdivision, after the expiration of 30 days following the
12 recording of a lien created pursuant to subdivision (d), the lien
13 may be enforced in any manner permitted by law, including sale
14 by the court, sale by the trustee designated in the notice of
15 delinquent assessment, or sale by a trustee substituted pursuant to
16 Section 2934a. Any sale by the trustee shall be conducted in
17 accordance with Sections 2924, 2924b, and 2924c applicable to
18 the exercise of powers of sale in mortgages and deeds of trust.
19 The fees of a trustee may not exceed the amounts prescribed in
20 Sections 2924c and 2924d.

21 (h) Nothing in this section or in subdivision (a) of Section 726
22 of the Code of Civil Procedure prohibits actions against the
23 owner of a separate interest to recover sums for which a lien is
24 created pursuant to this section or prohibits an association from
25 taking a deed in lieu of foreclosure.

26 (i) If it is determined that a lien previously recorded against
27 the separate interest was recorded in error, the party who
28 recorded the lien shall, within 21 calendar days, record or cause
29 to be recorded in the office of the county recorder in which the
30 notice of delinquent assessment is recorded a lien release or
31 notice of rescission and provide the owner of the separate interest
32 with a declaration that the lien filing or recording was in error
33 and a copy of the lien release or notice of rescission.

34 (j) *In addition to the requirements of Section 2924, a notice of*
35 *default shall be personally served by the association on the*
36 *owner's legal representative in accordance with the Code of*
37 *Civil Procedure.*

38 (k) (1) An association that fails to comply with the procedures
39 set forth in this section shall, prior to recording a lien,
40 recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

~~(k)~~

(l) This section only applies to liens recorded on or after January 1, 2003.

~~(j)~~

(m) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 4. Section 1367.4 is added to the Civil Code, to read:

1367.4. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than two thousand five hundred dollars (\$2,500), not including any late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees and costs of collection, attorney's fees, or interest,

1 equals or exceeds two thousand five hundred dollars (\$2,500).
2 An association that chooses to record a lien under these
3 provisions, prior to recording the lien, shall offer the owner and,
4 if so requested by the owner, participate in dispute resolution as
5 set forth in Article 5 (commencing with Section 1368.810) of
6 Chapter 4.

7 (3) Any other manner provided by law, except for judicial or
8 nonjudicial foreclosure.

9 (c) An association that seeks to collect delinquent regular or
10 special assessments of an amount of two thousand five hundred
11 dollars (\$2,500) or more, not including any late charges, fees and
12 costs of collection, attorney's fees, or interest, may use judicial or
13 nonjudicial foreclosure subject to the following conditions:

14 (1) Prior to initiating a foreclosure on an owner's separate
15 interest, the association shall offer the owner and, if so requested
16 by the owner, participate in dispute resolution as set forth in
17 Article 5 (commencing with Section 1368.810) of Chapter 4 or
18 alternative dispute resolution as set forth in Article 2
19 (commencing with Section 1369.510) of Chapter 7. The decision
20 to pursue dispute resolution or a particular type of alternative
21 dispute resolution shall be the choice of the owner, except that
22 binding arbitration shall not be available if the association
23 intends to initiate a judicial foreclosure.

24 (2) The decision to initiate foreclosure of a lien for delinquent
25 assessments that has been validly recorded shall be made only by
26 the board of directors of the association and may not be delegated
27 to an agent of the association. The board shall approve the
28 decision by a majority vote of the board members in an executive
29 session. The board shall record the vote in the minutes of that
30 meeting. The board shall maintain the confidentiality of the
31 owner or owners of the separate interest by identifying the matter
32 by the parcel number of the property, rather than the name of the
33 owner or owners.

34 (3) The board shall provide personal notice to an owner of a
35 separate interest who occupies the separate interest if the board
36 votes to foreclose upon the separate interest. The board shall
37 provide written notice to an owner of a separate interest who
38 does not occupy the separate interest by first-class mail, postage
39 prepaid, at the most current address shown on the books of the
40 association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

(5) A nonjudicial or judicial foreclosure by an association to collect upon a debt for delinquent assessments shall comply with the following requirements:

(A) The minimum bid shall be at least 65 percent of the appraised value, excluding any senior liens subject to which the successful bidder would be taking title.

(B) An appraiser appropriately certified by the Office of Real Estate Appraisers shall perform the exterior appraisal (using Form 2055 Exterior Only Appraisal). The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale. The appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.

(d) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.

SEC. 5. Section 1367.5 is added to the Civil Code, to read:

1367.5. If it is determined through dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2 that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

1 SEC. 6. Section 116.540 of the Code of Civil Procedure is
2 amended to read:

3 116.540. (a) Except as permitted by this section, no
4 individual other than the plaintiff and the defendant may take
5 part in the conduct or defense of a small claims action.

6 (b) A corporation may appear and participate in a small claims
7 action only through a regular employee, or a duly appointed or
8 elected officer or director, who is employed, appointed, or
9 elected for purposes other than solely representing the
10 corporation in small claims court.

11 (c) A party who is not a corporation or a natural person may
12 appear and participate in a small claims action only through a
13 regular employee, or a duly appointed or elected officer or
14 director, or in the case of a partnership, a partner, engaged for
15 purposes other than solely representing the party in small claims
16 court.

17 (d) If a party is an individual doing business as a sole
18 proprietorship, the party may appear and participate in a small
19 claims action by a representative and without personally
20 appearing if both of the following conditions are met:

21 (1) The claim can be proved or disputed by evidence of an
22 account that constitutes a business record as defined in Section
23 1271 of the Evidence Code, and there is no other issue of fact in
24 the case.

25 (2) The representative is a regular employee of the party for
26 purposes other than solely representing the party in small claims
27 actions and is qualified to testify to the identity and mode of
28 preparation of the business record.

29 (e) A plaintiff is not required to personally appear, and may
30 submit declarations to serve as evidence supporting his or her
31 claim or allow another individual to appear and participate on his
32 or her behalf, if (1) the plaintiff is serving on active duty in the
33 United States Armed Forces outside this state, (2) the plaintiff
34 was assigned to his or her duty station after his or her claim
35 arose, (3) the assignment is for more than six months, (4) the
36 representative is serving without compensation, and (5) the
37 representative has appeared in small claims actions on behalf of
38 others no more than four times during the calendar year. The
39 defendant may file a claim in the same action in an amount not to

1 exceed the jurisdictional limits stated in Sections 116.220 and
2 116.231.

3 (f) A party incarcerated in a county jail, a Department of
4 Corrections facility, or a Youth Authority facility is not required
5 to personally appear, and may submit declarations to serve as
6 evidence supporting his or her claim, or may authorize another
7 individual to appear and participate on his or her behalf if that
8 individual is serving without compensation and has appeared in
9 small claims actions on behalf of others no more than four times
10 during the calendar year.

11 (g) A defendant who is a nonresident owner of real property
12 may defend against a claim relating to that property without
13 personally appearing by (1) submitting written declarations to
14 serve as evidence supporting his or her defense, (2) allowing
15 another individual to appear and participate on his or her behalf if
16 that individual is serving without compensation and has appeared
17 in small claims actions on behalf of others no more than four
18 times during the calendar year, or (3) taking the action described
19 in both (1) and (2).

20 (h) A party who is an owner of rental real property may appear
21 and participate in a small claims action through a property agent
22 under contract with the owner to manage the rental of that
23 property, if (1) the owner has retained the property agent
24 principally to manage the rental of that property and not
25 principally to represent the owner in small claims court, and (2)
26 the claim relates to the rental property.

27 (i) A party that is an association created to manage a common
28 interest development, as defined in Section 1351 of the Civil
29 Code, may appear and participate in a small claims action
30 through a management company representative or bookkeeper
31 who appears on behalf of that association.

32 (j) At the hearing of a small claims action, the court shall
33 require any individual who is appearing as a representative of a
34 party under subdivisions (b) to (i), inclusive, to file a declaration
35 stating (1) that the individual is authorized to appear for the
36 party, and (2) the basis for that authorization. If the
37 representative is appearing under subdivision (b), (c), (d), (h), or
38 (i), the declaration also shall state that the individual is not
39 employed solely to represent the party in small claims court. If
40 the representative is appearing under subdivision (e), (f), or (g),

1 the declaration also shall state that the representative is serving
2 without compensation, and has appeared in small claims actions
3 on behalf of others no more than four times during the calendar
4 year.

5 (k) A husband or wife who sues or who is sued with his or her
6 spouse may appear and participate on behalf of his or her spouse
7 if (1) the claim is a joint claim, (2) the represented spouse has
8 given his or her consent, and (3) the court determines that the
9 interests of justice would be served.

10 (l) If the court determines that a party cannot properly present
11 his or her claim or defense and needs assistance, the court may in
12 its discretion allow another individual to assist that party.

13 (m) Nothing in this section shall operate or be construed to
14 authorize an attorney to participate in a small claims action
15 except as expressly provided in Section 116.530.

16 SEC. 7. Section 729.035 is added to the Code of Civil
17 Procedure, to read:

18 729.035. Notwithstanding any provision of law to the
19 contrary, the sale of a separate interest in a common interest
20 development is subject to the right of redemption within 90 days
21 after the sale if the sale arises from a foreclosure by the
22 association of a common interest development pursuant to
23 subdivision (g) of Section 1367.1 of the Civil Code, subject to
24 the conditions of Section 1367.4 of the Civil Code.